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MEMO ENDORSED

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VIA ECF

Hon. Andrew L. Carter, Jr.
United States District Judge
Southern District of New York
United States District Court
40 Foley Square
New York, NY 10007

Re: *United States v. Barend Oberholzer*, 21 CR 475 (ALC)

Dear Judge Carter:

I write to seek an adjournment of Mr. Oberholzer's sentencing, currently scheduled for September 14, 2023. For the reasons described below, Mr. Oberholzer respectfully asks that the Court schedule Mr. Oberholzer's sentencing for a date after November 1, 2023.

This is Mr. Oberholzer's second request for an adjournment. He does not anticipate any additional adjournment requests. When seeking the government's position, it informed us that it objects because the two assistant United States Attorneys assigned to this matter have trials in the mid to latter half of the fall. Ms. Kamal will be on trial between October 16 and November 3, 2023, and Mr. Capozzi will be on trial between November 27, 2023 and December 8, 2023. With those schedules in mind and accounting for the Thanksgiving holiday week, Mr. Oberholzer requests an adjourned date any day between November 13 and November 17, 2023 or any day on or after December 11, 2023.

Mr. Oberholzer seeks an adjournment for two reasons. First, Mr. Oberholzer seeks an adjournment until after November 1, 2023 so that he can be sentenced after the recently promulgated amendments to the United States Sentencing Guidelines go into effect. Those amendments include a change that applies to individuals, like Mr. Oberholzer, who have zero criminal history points. The change will have a material impact on Mr. Oberholzer's advisory Guidelines range.¹ Therefore, in the interests of justice, we ask that the Court adjourn sentencing until the amendments are in effect. *See, e.g., United States v. Elmandouh*, No. 21-cr-00592 (LTS), Memo Endorsement at ECF Dkt. 154 (granting motion—opposed by the government—to continue sentencing until after November 1, 2023 when Guideline changes for “zero-point offenders” become effective).

¹ The promulgated 2023 amendments to the United States Sentencing Guidelines includes a two-level decrease in the offense level for defendants who have zero criminal history points and who meet certain criteria. *See* Amendments to the Sentencing Guidelines (Preliminary), § 4C1.1(a)(1)-(10) (April 5, 2023). Mr. Oberholzer has zero criminal history points and he meets each of the other criteria. Therefore, if he were sentenced later this year, he will be eligible for the two-level reduction.

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Additionally, Mr. Oberholzer requests a continuance so that his counsel has adequate time to effectively prepare a sentencing submission on his behalf. Factoring in August vacation schedules, we are unable to collect all of the anticipated mitigation materials and complete drafting Mr. Oberholzer's sentencing submission sufficiently in advance of the currently scheduled September sentencing date.

Thank you for your consideration of this application.

Respectfully submitted,



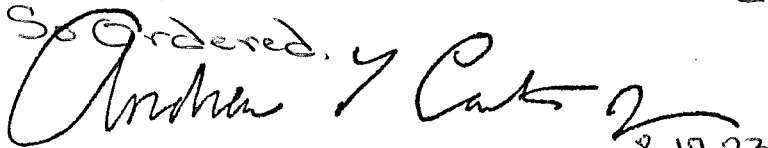
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cc: AUSAs Jilan Kamal and Timothy Capozzi (via ECF)

The application is granted. The sentencing
is adjourned to 11-8-23 at 2 p.m.

So Ordered. 
8-17-23